IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8865 of 2000

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL NARSHI MULJUI & CO.

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

MR KETAN D SHAH for Petitioner

MR MD PANDYA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 12/04/2004

ORAL JUDGEMENT

1. The present petition is directed against the order dated 19th June 2000 passed by the Appellate Committee of the Gujarat Electricity Board, in so far as the Appellate Committee dismissed the appeal of the petitioner.

2. Heard Mr. Ketan D. Shah for the petitioner and Mr. M.D. Pandya for the respondent Gujarat Electricity Board.

3. Mr. Shah submitted that the petitioner has not committed theft of electricity nor tampered with the meter mechanism. As against this submission, Mr. M.D. Pandya for the respondent Board submitted that the Appellate Committee, has considered this issue in detail and recorded a finding of fact that it is a case of theft and therefore there is no case for interference. The conclusion reached by the Appellate Committee regarding tampering with the meter is in consonance with the Rojkam and other relevant evidence on record and therefore I do not find any reason to disturb the said finding.

4. Mr. Shah next contended that the Appellate Committee has not considered all the documents produced before it, more particularly the meter reading register and stock register on the ground that the petitioner has not produced the muster roll. He further submitted that the Appellate Committee has not considered the submission regarding closure of the unit in the month of August and September 1994 and 15 days in January 1995 in respect of which meter reading register, etc. were produced before the Appellate Committee. Prima facie it seems that while deciding the matter, some of the documents which were necessary for taking a decision, were not considered by the Appellate Committee like meter reading register, stock register, etc. Therefore, I am of the opinion that the matter is required to be remanded on this limited point. Mr. Pandya is unable to contest this limited suggestion.

5. Accordingly, the impugned order of the Appellate Committee is partly set aside. The matter is remanded to the Appellate Committee for taking a fresh decision after considering the documents submitted by the petitioner. The petitioner shall approach the Appellate Committee within a period of three weeks from today and shall be at liberty to produce the documents such as stock register, muster roll etc. It will be open for the Appellate Committee to call for further details from the petitioner on production of new documents. The appellate committee shall examine the documents produced by the petitioner in light of the contention as mentioned above and take a decision after hearing the petitioner within a period of three months thereafter. Prima facie it seems that the Appellate Committee has accepted the contention that the unit of the petitioner was closed in August 1994 inasmuch

as the chargeable days are calculated from 1st September 1994 to 1st February 1995. However, it will be open for the petitioner to raise the contention in respect of the chargeable days in August 1994 and other relevant period. The protection granted by this Court shall continue till the disposal of the case of the petitioner. Rule is made absolute to the aforesaid extent. No order as to costs.

[K.S. JHAVERI, J.]

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